

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KRYSTAL WILLIAMS,

Plaintiff,

vs.

HARMON MEDICAL REHABILITATION,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

2:13-cv-02332-RCJ-NJK

ORDER

Pending before the Court is an Amended Complaint (“AC”) for screening under 28 U.S.C. § 1915. For the reasons given herein, the Court will permit the AC to proceed.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff Krystal Williams was employed by Defendant Harmon Medical Rehabilitation in September 2011. (Am. Compl. 4, ECF No. 5). Her direct supervisor, non-party Tommy Anderson continuously harassed Plaintiff with requests for sex and oral sex, threatening Plaintiff with a “write up” or termination when she refused. (*Id.*). Plaintiff reported the situation to Julie in the human resources department, but Julie told Plaintiff now law had been violated, and nothing was done to rectify the situation. (*Id.*). Anderson continued to solicit sex and oral sex. When Plaintiff reported the repeated harassment, she was suspended the following day for “insubordination and not following company rules” and was later terminated. (*Id.*).

Plaintiff filed a charge of discrimination with the EEOC, but the EEOC declined to pursue the case, instead issuing a right-to-sue letter on September 25, 2013. (*See id.* 4–5; Letter, ECF No. 1-1, at 3). Exactly ninety days later, Plaintiff filed the Complaint in this Court *in pro*

1 *se*, alleging sexual harassment under Title VII of the Civil Rights Act of 1964. (*See* Compl. 1–2,
2 ECF No. 1-1, at 1). The Magistrate Judge granted Plaintiff’s motion to proceed *in forma*
3 *pauperis*. However, the Complaint did not allege the facts giving rise to the claim, and the
4 charge of discrimination incorporated by reference was not attached to the Complaint, so the
5 Magistrate Judge dismissed with leave to amend under 28 U.S.C. § 1915(e). (*See* Order, ECF
6 No. 3). Plaintiff filed the AC, and the Court hereby screens it under § 1915(e).

7 **II. LEGAL STANDARDS**

8 Federal courts must conduct a preliminary screening under 28 U.S.C. § 1915(e) in any
9 case in which a Plaintiff seeks to proceed *in forma pauperis*. *See, e.g., Lopez v. Smith*, 203 F.3d
10 1122, 1129 (9th Cir. 2000) (en banc). In its review, a court must dismiss any claims that are
11 frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary
12 relief from a defendant who is immune from such relief. *See* § 1915(e)(2)(B). Dismissal of a
13 complaint for failure to state a claim upon which relief can be granted is provided for in Federal
14 Rule 12(b)(6), and the court applies the same standard under § 1915. *Wilhelm v. Rotman*, 680
15 F.3d 1113, 1121 (9th Cir. 2012). Whenever a court dismisses a complaint upon screening, the
16 plaintiff should be given leave to amend the complaint with directions as to curing its
17 deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be
18 cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995). The Prison
19 Litigation Reform Act did not institute a no-amendment rule for screenings under §§ 1915 and
20 1915A. *See Lopez*, 203 F.3d at 1127–30.

21 Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action
22 that fails to state a claim upon which relief can be granted. A motion to dismiss under Rule
23 12(b)(6) tests the complaint’s sufficiency. *See N. Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578,
24 581 (9th Cir. 1983). When considering a motion to dismiss under Rule 12(b)(6) for failure to
25 state a claim, dismissal is appropriate only when the complaint does not give the defendant fair

1 notice of a legally cognizable claim and the grounds on which it rests. *See Bell Atl. Corp. v.*
2 *Twombly*, 550 U.S. 544, 555 (2007). In considering whether the complaint is sufficient to state a
3 claim, the court will take all material allegations as true and construe them in the light most
4 favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). The
5 court, however, is not required to accept as true allegations that are merely conclusory,
6 unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden State*
7 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action with
8 conclusory allegations is not sufficient; a plaintiff must plead facts showing that a violation is
9 plausible, not just possible. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citations omitted).

10 “Generally, a district court may not consider any material beyond the pleadings in ruling
11 on a Rule 12(b)(6) motion. However, material which is properly submitted as part of the
12 complaint may be considered.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542,
13 1555 n.19 (9th Cir. 1990) (citation omitted). Similarly, “documents whose contents are alleged
14 in a complaint and whose authenticity no party questions, but which are not physically attached
15 to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss” without
16 converting the motion to dismiss into a motion for summary judgment. *Branch v. Tunnell*, 14
17 F.3d 449, 454 (9th Cir. 1994). Moreover, under Federal Rule of Evidence 201, a court may take
18 judicial notice of “matters of public record.” *Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279,
19 1282 (9th Cir. 1986).

20 Finally, all or part of a complaint filed by a prisoner may be dismissed *sua sponte* if the
21 prisoner’s claims lack an arguable basis in law or in fact. This includes claims based on legal
22 conclusions that are untenable, e.g., claims against defendants who are immune from suit or
23 claims of infringement of a legal interest which clearly does not exist, as well as claims based on
24 fanciful factual allegations, e.g., fantastic or delusional scenarios. *See Neitzke v. Williams*, 490
25 U.S. 319, 327–28 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

III. ANALYSIS

A plaintiff may state a claim of “quid pro quo” sexual harassment against a supervisor under Title VII by alleging that the person had supervisory authority over her and conditioned an employment benefit upon a sexual favor. *See Nichols v. Frank*, 42 F.3d 503, 511 (9th Cir. 1994). Where no adverse employment action has been taken, a claim against an employer for vicarious liability is subject to an affirmative defense that the employer exercised reasonable care to prevent and promptly correct the behavior and that the plaintiff unreasonably failed to take advantage of any corrective opportunities presented. *Burrell v. Star Nursery, Inc.*, 170 F.3d 951, 955 (9th Cir. 1999) (citing *Burlington Indus. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. Boca Raton*, 524 U.S. 775 (1998)). Where the alleged harasser has supervisory authority over the plaintiff and a tangible employment action has been taken, there is a presumption of vicarious liability that cannot be overcome. *Id.* at 956. Because Plaintiff alleges that Anderson conditioned Plaintiff’s continued employment on the performance of sexual favors, and because Plaintiff alleges she was suspended and terminated for refusing, she has made out a prima facie case of quid pro quo sexual harassment by Anderson for which Defendant is vicariously liable. Because Plaintiff alleges adverse employment actions, the Court need not consider whether, according to the allegations, Defendant acted reasonably in attempting to correct the situation or if Plaintiff acted unreasonably in rejecting those opportunities. That defense will not be available unless there is a genuine issue of material fact at the summary judgment stage as to whether Anderson was in fact Plaintiff’s supervisor or whether Plaintiff was in fact subjected to an adverse employment action.

///

///

///

///

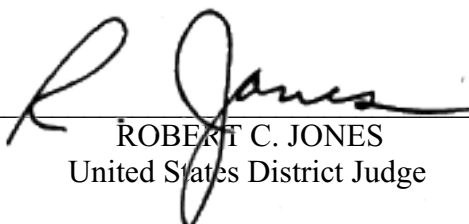
CONCLUSION

IT IS HEREBY ORDERED that the Amended Complaint (ECF No. 5) may PROCEED.

IT IS FURTHER ORDERED that the Clerk shall file the Amended Complaint, issue a Summons to Defendant, and deliver the Summons and Amended Complaint to the U.S. Marshal for service. Plaintiff shall have twenty days in which to furnish the U.S. Marshal with the required Form USM-285. Within twenty days after receiving from the U.S. Marshal a copy of the Form USM-285, showing whether service has been accomplished, Plaintiff must file a notice with the court identifying whether defendant was served. If Plaintiff wishes to have service again attempted on an unserved defendant, a motion must be filed with the Court identifying the unserved defendant and specifying a more detailed name and/or address for the defendant, or whether some other manner of service should be attempted. Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, service must be accomplished within 120 days from the date this order is entered. From this point forward, Plaintiff shall serve upon Defendant, or, if appearance has been entered by counsel, upon Defendant's attorney(s), a copy of every pleading, motion, or other document submitted for consideration by the Court. Plaintiff shall include with the original papers submitted for filing a certificate stating the date that a true and correct copy of the document was mailed to Defendants or counsel for Defendant. The Court may disregard any paper received by a District Judge or Magistrate Judge which has not been filed with the Clerk, and any paper received by a District Judge, Magistrate Judge, or the Clerk which fails to include a certificate of service.

IT IS SO ORDERED.

Dated this 16th day of December, 2014.


ROBERT C. JONES
United States District Judge